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1 Adam Majewski  
2 5504 Amber Way  
3 McKinney, Texas 75070  
4 (214) 545-8073  
5 In Proper Person

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2 **UNITED STATES DISTRICT COURT**  
3  
4 **DISTRICT OF NEVADA**

5  
6 MGM RESORTS INTERNATIONAL  
OPERATIONS, INC., a Nevada  
Corporation

CASE NO. 2:11-ev-01929

Plaintiff,

v.

SHAHRAM KOLAHZADEH  
EVAN KRENTZMAN  
ROBERTO CIAMILLO  
ADAM MAJEWSKI  
REVNET  
POKERSONS  
Defendants.

Defendant Adam Majewski's Motion to  
Dismiss Pursuant to Fed. R. Civ. P.  
12(B)(2) or in the alternative, to transfer  
Venue.

7  
8 **DEFENDANT ADAM MAJEWSKI'S MOTION TO DISMISS**  
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10

11 **INTRODUCTION**  
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14  
15 TO THE HONORABLE JUDGE OF SAID COURT; pursuant to Fed. R. Civ. P.  
16 12(B)(2), I, Adam Majewski, timely files this Motion to Dismiss. I believe this Court lacks  
17 personal jurisdiction over me because the Plaintiff has not and cannot meet its burden to show

1 that personal jurisdiction over me is proper in Nevada under the “effects test”<sup>1</sup> which is the only  
 2 basis for which the Plaintiff claims personal jurisdiction over me in its complaint.

3 **STATEMENT OF FACTS**

4 Recent changes in Nevada law have opened up the prospect for Internet gambling. Late  
 5 to the feeding frenzy, MGM has apparently decided it wants a piece of the action. MGM wants  
 6 to leverage the well-known names of some of their Hotels in Las Vegas. One of these Hotels is  
 7 the Excalibur. Unfortunately, they find out that Adam Majewski of McKinney, Texas owns the  
 8 domain name Excaliburpoker.com. Excalibur is not a distinctive mark. It was the sword of  
 9 kings in the Arthur legends. Thousands of businesses use this name—Excalibur bowling,  
 10 Excalibur Taxi, and even Excalibur condoms. However, MGM feels that, if they so choose, they  
 11 are entitled to claim eminent domain over any use of the Excalibur name in any new business  
 12 venture they intend to pursue. They do not contact me prior to this action. Instead, they hire a  
 13 big law firm. The law firm did not contact me as well. Instead they join unrelated defendants  
 14 and slam dunk an ex-parte action claiming trademark infringement and cybersquatting.

15 I am an entrepreneur and innovator in online gaming, internet marketing, and social  
 16 media. One of my iPhone apps was featured on a leading network’s morning show.  
 17 Excaliburpoker.com was already an existing online poker site/platform prior to me acquiring the  
 18 domain name. At that time there were hundreds of online poker sites. I believed the medieval  
 19 theme would make my site distinctive. Shortly thereafter, I began work on my ZeroRiskPoker  
 20 platform. The idea was to localize competitive poker online where the players would win prizes  
 21 and gift cards in tournaments sponsored by local advertisers. I registered domain names in over  
 22 100 cities and specifically left off Las Vegas, Reno, and Henderson NV. The 100 cities were  
 23 based on the top 100 cities by population. I excluded those 3 as I concluded that individuals that

<sup>1</sup> *Calder v. Jones*, 465 U.S. 783 (1984)

1 could gamble for real money would not want to play poker for prizes valued at a few dollars. I  
 2 continue to spend time and money on these efforts.

3 **ARGUMENTS & AUTHORITIES**

4 First, the plaintiff's complaint is legally insufficient to support a *prima facie* case for  
 5 personal jurisdiction over me. The Plaintiff does not state any facts to support the second or  
 6 third required element of the Calder "effect test."<sup>2</sup> Second, the Plaintiff does individually  
 7 address the issue of personal jurisdiction under Calder for each of the Defendants. A blanket  
 8 assertion against a group of unrelated Defendants is insufficient.

9 Under the Calder's "effects test," the defendant must have (1) committed an intentional  
 10 act, (2) expressly aimed at the forum state, (3) which causes harm that the defendant knows is  
 11 likely to be suffered in the forum state. *Id.*; *see also Brayton Purcell LLP v. Recordon &*  
 12 *Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010). The "express aiming" prong requires that  
 13 Defendant's conduct be expressly aimed at the forum. *Id.* at 1129. While maintenance of a  
 14 passive website alone cannot satisfy the express aiming prong, operating a passive website in  
 15 conjunction with "something more --conduct directly targeting the forum -- is sufficient to confer  
 16 personal jurisdiction." *Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1020 (9th Cir.  
 17 2002). Within the cybersquatting context, Panavision suggests that merely registering a domain  
 18 name and linking it to a website does not alone constitute "express aiming." 141 F.3d at 1321.

19 My www.Excaliburpoker.com site is nothing more than a page and has been a page for  
 20 the past several years. No Excalibur Hotel and Casino marks are or have been used. It's hard to  
 21 imagine a more passive website. What does the Plaintiff allege is the "something more"? The

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<sup>2</sup> Where a court considers a motion to dismiss for lack of jurisdiction without an evidentiary hearing, "the plaintiff need only demonstrate facts that if true would support jurisdiction over the defendant." *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995).

1 Plaintiff makes general allegations against all the Defendants that they are “trading off the  
 2 substantial fame, goodwill and consumer recognition” of, in my case, the “Excalibur” name. But  
 3 this is a mere allegation of trademark infringement. Excalibur is a nice name for a hotel in Las  
 4 Vegas. But should Excalibur Dry cleaning or Excalibur bowling lanes or Excalibur liquors be  
 5 subject to personal jurisdiction in Nevada because the Excalibur Hotel in Las Vegas thinks it  
 6 owns the naming rights to the sword of the Arthur legends?

7 WWW.ExcaliburPoker.com does not compete with the Hotel. There is no likelihood of  
 8 confusion because the hotel does not offer online gaming. Accordingly, it cannot divert  
 9 potential customers away from the hotel. It has not harmed the Hotel in any way. Heretofore,  
 10 the Excalibur Hotel has not engaged its “brand” with any online gaming.

11 Perhaps most compelling, I have deliberately avoided targeting Nevada in my gaming  
 12 ventures under the theory that demand would be weak since gamers in Nevada can go out and  
 13 get the real thing.

14 **Where's the Harm?**

15 The Federal Courts are not in the business of issuing advisory opinions on speculative  
 16 harms. For me to be subject to personal jurisdiction under the “effects test”, I “must know that  
 17 my conduct is likely to cause harm in the forum.”<sup>3</sup> Heretofore, the Excalibur Hotel had not  
 18 bothered to engage in any online gaming. A cursory Google search reveals that it still has no  
 19 presence in that market. I cannot find any Excaliburblackjack.com or  
 20 Excaliburroulettewheel.com or Excaliburcraps.com and I believe those domains might be  
 21 available. How could I be expected to foresee any harm to a large Vegas Hotel by holding a  
 22 domain name generic in any other context and targeting a market that the Hotel has not yet  
 23 chosen to enter. If all the marketing gurus at MGM didn't anticipate the future of online

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<sup>3</sup> *Ringcentral, Inc. v. Quimby*, 711 F.Supp2d 1048 (N.D. Cal. 2010).

1 gaming, how am I to be held accountable? In any case, there hasn't been any harm.  
2 Furthermore, I understand that internet users do not search for their interests by typing in URL  
3 guesses. Rather, they go to a search engine and type their query. Go ahead and google  
4 "Excalibur poker" as a typical consumer would, and the first two pages are all links to Excalibur  
5 Hotel related sites. If the Excalibur Hotel wants to get into the adult entertainment business, can  
6 they haul the owners of the domain www.Excaliburfilms.com into Nevada Federal Court  
7 claiming trademark infringement and cybersquatting?

8 **Motion to Transfer Venue**

9 In the alternative, even if venue is proper in the District Court of Nevada, this case should  
10 be transferred to the Northern District of Texas. 28 U.S.C. § 1404(a) gives this Court discretion  
11 "to adjudicate motions for transfer according to an individualized, case-by-case consideration of  
12 convenience and fairness." *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000)  
13 (citation and quotation marks omitted). In determining whether to transfer to another proper  
14 venue, the court considers a number of factors, including: (1) the plaintiff's choice of forum,  
15 which is given substantial weight if the chosen forum is the plaintiff's home forum, *id.*; (2) the  
16 convenience of the parties, *Vu v. Ortho-McNeil Pharmaceutical, Inc.*, 602 F. Supp. 2d 1151,  
17 1156 (N.D. Cal. 2009); (3) the location of the witnesses, *id.*; (4) the ease of access to evidence,  
18 *id.*; and (5) the respective parties' contacts with the forum, *Jones*, 211 F.3d at 498.

19 This action was well calculated by the Plaintiff to impose substantial burdens on me to  
20 defend my private property. The Plaintiff conducted no due diligence in ascertaining any facts  
21 about the circumstances or use by me of the domain name at issue. They made no attempt to  
22 contact me prior to filing this action. Time and cost constraints impose significantly greater  
23 burdens on me. MGM is quite capable of sustaining an action in Dallas. It is not clear where

1 MGM's in-house counsel are located and it is likely they are already disconnected from the  
2 proposed forum. The poker platform is located in Texas. Many business associates and other  
3 potential witnesses are located in North Texas.

4 **PRAYER FOR RELIEF**

5 For these reasons, I respectfully request this action be dismissed, or in the alternative,  
6 that the action be transferred to North Texas to serve the interests of justice.

7 Dated this 8<sup>th</sup> day of December, 2011.

8

9 Respectfully submitted by:

10 

11 Adam Majewski  
12 5504 Amber Way  
13 McKinney, Texas 75070  
14 (214) 545-8073  
15 In Proper Person  
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**CERTIFICATE OF FACSIMILE**

On the 8<sup>th</sup> day of December, 2011, the undersigned faxed a true and correct copy of the foregoing document to the following:

Michael J. McCue  
John L. Krieger  
Jonathan W. Fountain  
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Attorneys for Plaintiff  
MGM RESORTS INTERNATIONAL  
OPERATIONS INC.

Bonita Fountain

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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

12 **MGM RESORTS INTERNATIONAL**  
13 **OPERATIONS, INC, a Nevada**  
14 **Corporation**

16 *Plaintiff,*

18 **v.**

20 **SHAHRAM KOLAHZADEH**  
21 **EVAN KRENTZMAN**  
22 **ROBERTO CIAMILLO**  
23 **ADAM MAJEWSKI**  
24 **REVNET**  
25 **POKERSONS**

27 *Defendants.*

10 **CASE NO. 2:11-ev-01929**

11 **DECLARATION OF**  
12 **ADAM MAJEWSKI**

29 **DECLARATION OF ADAM MAJEWSKI**

31 I, Adam Majewski declare, under penalty of perjury under the laws of the United States,  
32 that the following is true and correct:

34 1. My name is ADAM MAJEWSKI. I am over 18 years of age, of sound mind, and capable  
35 of making this declaration. The facts stated in this declaration are within my personal  
36 knowledge and are true and correct.

37 2. I am the owner of ExcaliburPoker.com and reside in McKinney, Texas.

38 3. I have been in the online poker business for 8 years. During this period I have spoken at  
39 poker conferences, worked with poker professionals, worked with celebrities, agencies,  
40 and have worked with individuals in the poker business.

1

2 4. During the 8 year period in the poker business I have built websites, databases, and

3 software solutions pertaining to the poker industry.

4

5 5. During this 8 year period I have built an entire online (web based) and iPhone

6 Application specific to the poker industry.

7

8 6. The domain name ExcaliburPoker.com was a fully functioning online poker platform for

9 several years prior to me acquiring the domain name. It was themed in a medieval look

10 and feel. Knights, Kings, Queens, Princesses, Court Jesters, were commonly displayed

11 on the site prior to me acquiring the domain name. No Excalibur Hotel and Casino logos,

12 fonts, or mention was displayed on the site or in the software.

13

14 7. I acquired the domain name ExcaliburPoker.com when the current owner elected to shut

15 down the online poker platform and allow the domain name to lapse for a reason

16 unknown to me. I was aware of this because I was working with the software company

17 that licensed the technology to the previous owner.

18

19 8. I acquired the domain name after deciding that a themed online poker platform would be

20 a game changer in the industry. Hundreds if not thousands of online poker platforms

21 existed at the time, however many were not themed. Most of the competition had the

22 same look and feel. Being in the industry for years and studying retention rates, customer

23 feedback, seeing how video games with avatars like Sims and other games drew

24 customers to play longer and enjoy the experience more, I knew that a themed poker

25 platform was appropriate.

26

27 9. My intent was to develop ExcaliburPoker.com into a poker platform. I have spent tens of

28 thousands of dollars developing this platform and thousands of hours.

29

30 10. After the acquisition of ExcaliburPoker.com I acquired over 100 additional domains such

31 as DallasFreePoker.com, BostonFreePoker.com, FresnoFreePoker.com. All with a city

32 as the benchmark. This was for SEO purposes and also for the purpose of creating a

33 business model in which you could play poker against individuals in your city for prizes

34 from local advertisers. When I acquired the city domain names I specifically left off Las

35 Vegas, Reno, and Henderson NV as I concluded that individuals that could already

36 gamble for real money would not want to play for prizes valued at a few dollars.

37

38 11. I have never used any logos, fonts, names, or likeness of Excalibur Hotel and Casino on

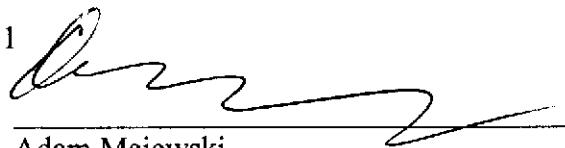
39 the website.

40

41 EXECUTED: this 8<sup>th</sup> day of December, 2011

42

43



Adam Majewski